IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.MC.No. 134 of 2007()

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ST.48/1991 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE
CRRP.380/96 OF THIS HON'BLE COURT

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PETITIONER:

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P.J. LOTHER, S/O.JOSEPH,
PALLIPARAMBAN HOUSE, ARANATTUKARA,
THRISSUR.

BY ADV. SRI.P.K.ASHOKAN
SMT.DHANYA P.ASHOKAN

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.134 of 2007**

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Dated this the 16th day of January, 2007

**ORDER**

The petitioner has been found guilty, convicted and sentenced under Sections 279 and 304 A I.P.C. The verdict of guilty, conviction and sentence have now become final by the order passed by this Court in revision. The order was passed in the revision as early as on 1.7.2005.

2. The sentence has not been executed so far. The petitioner has come to this Court with this Crl.M.C praying that the sentence may not be executed until a petition filed by him before the Government for commutation of the sentence is disposed of by the Government. That application, a copy of which is produced as Annexure-B, was submitted as early as on 27.07.2005, it is submitted. No orders have been passed so far in that application. The said application has been acknowledged as per Annexure-C. The requisite clarifications have all been furnished by the petitioner to the Principal Secretary to Government, who has to consider the prayer for commutation.

3. No orders having been passed on Annexure-B application by the Government, the short prayer of the petitioner is that the sentence may not be executed till that date.

4. In this Crl.M.C, the Principal Secretary is not made a party. No prayer is specifically made for a direction to dispose of Annexure-B by the Principal Secretary to Government. Simply because an application has been filed for commutation under Section 432 Cr.P.C, the execution of the sentence cannot be indefinitely postponed. The alleged incident had taken place as early as on 02.05.1988. The verdict of guilty, conviction and sentence had become final on 1.7.05. The prayer for indefinite postponement of execution of the sentence merely on the ground that an application for commutation is pending, cannot obviously be accepted. In these circumstances, I am satisfied that the prayer made in this Crl.M.C cannot be accepted. This Crl.M.C deserves dismissal.

5. The learned counsel for the petitioner then submits that breathing time may be given to the petitioner to move this Court for an expeditious disposal of the petition for commutation under Section 432 interim orders in such application to ensure that the sentence is not executed by then. Though I find no satisfactory explanation for the petitioner not seeking such relief till now, I am satisfied that the petitioner can be granted time till 30.01.2007.

6. This Crl.M.C is, in these circumstances, dismissed-but with the observation that the sentence shall not be executed against the petitioner till 30.01.2007. If no orders are obtained on Annexure-B or

interim orders from Courts, the petitioner shall surrender before the learned Magistrate on 30.01.2007 for execution of the sentence.

**(R.BASANT, JUDGE)**

rtr/-